

March 22, 2000

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Dear Ken,

This letter is in response to your correspondence dated March 3, 2000 concerning possible conflicts of interest of council members/budget committee members regarding relatives who have jobs which are funded in the budget.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
00S-006**

STATED FACTS: The two instances described below involve a city. The city has approximately 30 employees. The city charter has a specific provision delegating hiring, firing and discipline procedures to the city administrator.

The first scenario involves a council member and the council member's spouse who has been appointed to the budget committee. Their son-in-law is an employee of the city. They will review and adopt the budget of the city, which includes wages for the son-in-law. The son-in-law's position is not a position subject to union negotiation or bargaining. His recommended salary is a part of the budget.

The second scenario involves an elected official whose spouse is an employee of the city. The difference is in the definition of relative, as spouse of the public official is clearly listed.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

ORS 244.020(1): Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person

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is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (7) of this section.

ORS 244.020(7): Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

ORS 244.020(15): Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

ORS 244.020(16): Relative means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse.

ORS 244.040: Code of ethics; prohibited actions; honoraria. The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

(1)(a) No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated.

ORS 244.120: Methods of handling conflicts; generally; application to elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

ORS 244.120(2): An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

QUESTION #1: With regard to the first scenario, the council member and council member's spouse who is a member of the budget committee, would either have an actual conflict of interest or a potential conflict of interest by taking official action on the city budget which includes salary for their son-in-law?

OPINION: The definition of relative in ORS 244.020(16) does not include the spouses of children. Notwithstanding, the GSPC staff believes that the prohibition against using J. Kenneth Jones

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public office for the financial gain of a relative would apply here because the financial gain received by the child's spouse would also impact the child of the public official and/or the public official's spouse.

If the council member or budget committee member were to take any official action which could or would have a financial impact on their son-in-law, the GSPC staff believes that the councilor and budget committee member would have to proceed according to the requirements of ORS 244.120(2).

Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. A actual conflict of interest occurs when the action is reasonably certain to result in a financial benefit or detriment. It will occur when an action taken by the public official would directly and specifically affect the financial interest of the public official or the public official's relative or a business with which the public official or the public official's relative is associated. A potential conflict of interest exists when a public official takes action that could possibly have a financial impact on that public official, a relative of that public official or a business with which the public official or a relative of the public official is associated. Such possible financial impact is not certain.

It appears from the stated facts that the council member and budget committee member would have an actual conflict of interest with regard to that portion of the budget containing the salary of the son-in-law and would have to follow the requirements set forth in ORS 244.120(2)(b).

QUESTION #2: Assuming there is an actual conflict of interest, must the council member and budget committee member in the first scenario recuse themselves from being involved in the budget as a whole; being involved with the budget regarding this fund; or being involved with the budget relating to this specific line item?

OPINION: The actual conflict of interest pertains only to the salary of the son-in-law of the council member and the budget committee member. They would only be required to adhere to the guidelines of ORS 244.120(2)(b) with regard to the specific line item of the son-in-law's salary.

QUESTION #3: At some point, the budget committee will recommend a total budget to the city council and the city council will act on the entire budget. Are the parties prohibited from acting on the budget?

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OPINION: The councilor and budget committee member have no conflict of interest with any portion of the budget other than the salary of the son-in-law. The salary of the son-in-law would have to be separated from the rest of the budget before the councilor and budget committee member could take action on the portion of the budget not related to the son-in-law.

QUESTION #4: With regard to the second scenario, is there either an actual conflict of interest or a potential conflict of interest?

OPINION: The opinion to this scenario is the same as the opinion to the first scenario.

QUESTION #5: Assuming there is an actual conflict of interest, must the city councilor in the second scenario be recused from being involved in the budget as a whole; being involved with the budget regarding this fund; or being involved with the budget relating to this specific line item?

OPINION: Same legal analysis as the opinion to question #2.

QUESTION #6: At some point, the budget committee will recommend a total budget to the city council and the city council will act on the entire budget. Is the city councilor prohibited from acting on the entire budget?

OPINION: Same legal analysis as the opinion to question #3.

QUESTION #7: If the spouse is a member of a labor union with 5 to 10 members, would the council member have a conflict of interest regarding any union affairs or approval of the union contract? The union contract does set wages.

OPINION: ORS 244.020(7)(b) provides an exception to conflicts of interest when an official action affects all members of a class to the same degree. Sometimes a public official may take action that would have a financial affect on that official, a relative of that official or a business with which the official or the official s relative is associated. If other people in a group or class are financially affected to the same degree by that action, the official would be exempt from conflict of interest disclosure requirements. The GSPC staff presumes that, because this is a union contract, the contract affects all 5 to 10 members to the same degree. In this scenario, a class exception would exist and the council member would be exempt from the conflict of interest disclosure requirements.

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THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Sincerely,

L. Patrick Hearn
Executive Director

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